

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

OLEG DERIPASKA,

Plaintiff,

v.

STEVEN T. MNUCHIN, Secretary of the
UNITED STATES DEPARTMENT OF
THE TREASURY, ANDREA M. GACKI,
DIRECTOR OF THE OFFICE OF
FOREIGN ASSETS CONTROL,

Defendants.

Civil Action No. 19-cv-00727 (APM)

**DEFENDANTS' NOTICE OF WITHDRAWAL OF OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO FILE SUPPLEMENTAL PLEADING AND JOINT REQUEST
TO FILE STATUS REPORT WITHIN 75 DAYS IN LIEU OF DECEMBER 9, 2019
STATUS CONFERENCE**

Defendants Steven T. Mnuchin, in his official capacity as Secretary of the United States Department of the Treasury, and Andrea M. Gacki, in her official capacity as Director of Treasury's Office of Foreign Assets Control ("OFAC"), hereby withdraw their opposition to Plaintiff's motion seeking leave to file a supplemental complaint pursuant to Federal Rule of Civil Procedure 15(d). *See* Motion for Leave to File Supplemental Pleading and Memorandum in Support Thereof ("Motion for Leave"), ECF No. 16. While Defendants initially opposed the motion because of their concern that granting the motion would unduly delay the resolution of this case, subsequent events have altered that calculus. In particular, Defendants have informed Plaintiff's counsel that OFAC will endeavor to provide an unclassified summary of information in the administrative record that is classified. Plaintiff's counsel has informed the undersigned that, in the event Plaintiff receives such a summary, Plaintiff may amend his complaint with respect to

his challenge to his designation under Executive Order 13661,¹ which is based on classified information in the administrative record. In short, it appears that additional briefing may be necessary in this case and therefore Defendants have decided not to oppose Plaintiff's Motion for Leave.

In addition, the parties have conferred about Plaintiff's request for administrative reconsideration of his designation under Executive Order 13662 (for operating in the energy sector of the Russian economy). On November 13, 2019, OFAC sent a questionnaire to Plaintiff seeking additional information relating to his potential operations in the energy sector of the Russian economy. Plaintiff's counsel has informed the undersigned that Plaintiff has not yet determined whether he intends to respond to that questionnaire. Defendants will endeavor to reach a decision on the request for administrative reconsideration within 60 days of receiving a response to the questionnaire or receiving a written indication from the Plaintiff whether he does not intend to respond. Once OFAC issues a decision, Plaintiff's counsel has informed the undersigned that Plaintiff may seek to amend Count III of his proposed Supplemental Complaint. *See* Supplemental Complaint, ECF No. 16-2.

For all these reasons, the parties agree that further briefing may be necessary but that the parties should wait until (i) OFAC provides an unclassified summary and a response to Plaintiff's request for administrative reconsideration, and (ii) Plaintiff has an opportunity to amend his complaint in response to these events. Accordingly, the parties propose that they file a status report no later than 75 days from today's date, updating the Court on the status of the proceedings, including, if possible, a proposed schedule for filing an amended complaint and a summary

¹ OFAC designated Plaintiff under Executive Order 13661 based on the agency's determination that Plaintiff acted or purported to act for or on behalf of, directly or indirectly, a senior official of the Government of the Russian Federation (i.e., Vladimir Putin).

judgment briefing schedule. Further, in light of these developments, the parties believe that it may not be necessary to proceed with the status conference scheduled for this Monday, December 9, 2019.

Dated: December 6, 2019

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

DIANE KELLEHER
Assistant Director

/s/ Nicholas Cartier
NICHOLAS CARTIER
Trial Attorney (DC Bar # 495850)
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, DC 20005
Tel: (202) 616-8351
Fax: (202) 616-8470
E-mail: Nicholas.Cartier@usdoj.gov

Counsel for Defendant

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[PROPOSED] ORDER

Upon due consideration of Defendants' Notice of Withdrawal of Opposition to Plaintiff's Motion for Leave to File Supplemental Pleading and Joint Request to File Status Report within 75 Days in Lieu of December 9, 2019 Status Conference, it is hereby ordered that:

- The December 9, 2019 Status Conference is cancelled; and
- The parties shall file a joint status report within 75 days informing the Court as to whether Defendants have provided an unclassified summary to Plaintiff, the status of Plaintiff's request for administrative reconsideration of his designation under Executive Order 13662, and, if possible, a proposed schedule that includes time for Plaintiff to amend his complaint, if necessary, and a summary judgment briefing schedule.

SO ORDERED.

Date: _____, 2019

HON. AMIT P. MEHTA
United States District Judge